IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

FILLMORE TOWNSHIP, a general law township, SHIRLEY GREVING, ANDREA STAM, LARRY SYBESMA, JODY TEN BRINK, and JANE RIETVELD,

Plaintiffs-Appellants,

v.

CANDICE S. MILLER, Michigan Secretary of State, CHRISTOPHER M. THOMAS, Director of Bureau of Elections,

Defendants-Appllee,

v.

CITY OF HOLLAND, a home rule city,

Intervenor-Appellee.

Supreme Court Docket No. 126369

Court of Appeals Docket No. 245640

BRIEF ON APPEAL - INTERVENOR - APPELLEE CITY OF HOLLAND

Andrew J. Mulder (P26280)
P. Haans Mulder (P61842)
Vincent L. Duckworth (P64222)
CUNNINGHAM DALMAN, P.C.
Attorneys for Intervenor-Appellee City of Holland
321 Settlers Road, PO Box 1767
Holland, MI 49422-1767
(616) 392-1821

ORAL ARGUMENT REQUESTED

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page

Cases

Statutes

Court Rules

Other Authorities

STATEMENT OF QUESTIONS INVOLVED

I. WHETHER A SINGLE DETACHMENT PETITION AND THE VOTE THEREON, PURSUANT TO THE TERMS OF THE HOME RULE CITIES ACT, MCL 117.1, et. seq., MAY ENCOMPASS TERRITORY TO BE DETACHED TO MORE THAN ONE TOWNSHIP?

Intervenor-Appellee answers: "No."

The Court of Appeals answered: "No."

Plaintiffs-Appellants answers: "Yes."

II. WHETHER A WRIT OF MANDAMUS SHOULD ISSUE TO COMPEL THE SECRETARY OF STATE TO ISSUE A NOTICE DIRECTING AN ELECTION OF THE CHANGE OF BOUNDARY SOUGHT BY APPELLANTS?

Intervenor-Appellee answers: "No."

The Court of Appeals answered: "No."

Plaintiffs-Appellants answers: "Yes."

COUNTER-STATEMENT OF JURISDICTION

The Appellants conveniently omit any statement of jurisdiction in this case.[1] Intervenor-Appellee City of Holland (the "City of Holland") asserts that jurisdiction is not proper in this case.

The Appellants filed this action as a complaint for writ of mandamus directly in the Court of Appeals.[2] In the complaint, the Appellants claimed that the Court of Appeals "has jurisdiction to adjudicate the matters of which Plaintiffs complain pursuant to MCR 7.203(C)(2), MCR 7.206(B),[3] MCR 7.216, MCR 3.305(A)(1), and MCL 600.4401. See Plaintiff's complaint for writ of mandamus at p. 2b of **Intervenor-Appllee City of Holland's Appendix**. Despite the Appellants' contention, none of these provisions provided the Court of Appeals (and now this Court) with jurisdiction that should be exercised in this case.

With regard to MCR 7.203(C)(2), it provides for the jurisdiction in the Court of Appeals and states in part:

> "(C) EXTRAORDINARY WRITS, ORIGINAL ACTIONS, AND ENFORCEMENT ACTIONS. The Court ***may*** entertain an action for:
>
> .....
>
> (2) Mandamus against a state officer (see MCL 600.4401; MSA 27A.4304)." (Emphasis added.)

---

[1]MCR 7.306 requires that brief in the Supreme Court comply with MCR 7.212(B), (C), and (D). MCR 7.212(C)(4) requires that the statement of jurisdiction be provided in a brief.

[2]In contrast, the plaintiffs in the Casco Township case filed (as they should have) a complaint for writ of mandamus in Ingham County Circuit Court which was subsequently appealed to the Court of Appeals.

[3]MCR 7.206(B) merely includes the filing requirements for extraordinary writs, original actions, and the enforcement of actions and therefore, does not provide the underlying basis for jurisdiction in this case.

The clear language of MCR 7.203(C)(2) is that jurisdiction is ***discretionary.*** Moreover, MCL 600.4401 provides in part:

> "(1) An action for mandamus against a state officer shall be commenced in the Court of Appeals, or in the circuit court in the county in which venue is proper or in Ingham County, at the option of the party commencing the action."

The Court of Appeals has ruled that this statute, as well as MCR 7.203, indicates that the Court of Appeals and circuit courts have "concurrent jurisdiction over these types of actions." See Saginaw Valley Trotting Association v. Michigan Racing Commissioner, 84 Mich App 564, 269 NW2d 676 (1978).

Likewise, the Appellants cite to MCR 3.305(1) in support of jurisdiction in this case. This section provides in part:

> "An action for mandamus against a state officer ***may*** be brought in the Court of Appeals or the circuit court." (Emphasis added.)

Superficially, MCR 3.305(1) appears to give a plaintiff the option of filing in either the Court of Appeals or the circuit court. ***However,*** the Court of Appeals has indicated that the policy behind MCR 3.305(A)(1) is that the plaintiff seeking relief has an adequate remedy at law available in the circuit court and originating such an action in the Court of Appeals is not practical and not favored by sound court policy. See Saginaw Valley Trotting Association, 84 Mich App 564 (1978). While the court in Saginaw Valley Trotting Association did not require that all mandamus actions against state officers must start in the circuit court, it stated as follows:

> "However, it would seem that the rationale of this decision ***would apply to most mandamus proceedings for review of state officers agency decision where a remedy for review or appeal in circuit court is available*** under either the specific statute under which the agency proceedings were conducted, Chapter 6 of the Administrative Procedures Act, MCL 24.301, et. seq.; MSA 3.560 (2001), et. seq., or 631 of the Revised

> Judicature Act, MCL 600.631; MSA 27A.631.[4] Where circuit court review or appeal is available under one of these sources, a mandamus is filed in the Court of Appeals, this Court should properly decline to entertain the complaint on the grounds that the circuit court remedy, coupled with a complaint, motion, or prayer for mandamus relief, is an available adequate remedy." See Id. at 572. (Emphasis added.)

Previously, the Supreme Court stated in reference to filing a writ of superintending control that "reasons of policy dictate that such complaints (for superintending control) ***be directed to the first tribunal within the structure of Michigan's one court of justice having competence to hear and act upon them."*** People v. Flint Municipal Judge, 383 Mich 429, 432, 175 NW2d 750 (1970). (Emphasis added.)

From the Appellants' complaint for writ of mandamus, it is clear that they are seeking redress from a decision of a state agency. The decisions in Saginaw Valley Trotting Association and Flint Municipal Judge provide that the Appellants should have filed this action in the circuit court and jurisdiction in the Court of Appeals, as an original action, is improper.

It is also important to note that in determining whether to exercise discretionary jurisdiction, a court should analyze whether there are any unresolved factual issues to be determined at trial. Gravlin v. Department of State Police, 87 Mich App 217, 274 NW2d 21 (1978). In Gravlin, the Court of Appeals elected to exercise original jurisdiction because "the facts are undisputed. Only a question of law is involved." Id. at 221.

In this case, there is a ***significant factual issue*** of whether the parcels included in the Appellants' complaint for writ of mandamus are disassociated and completely independent of one another. The most egregious example is a parcel adjacent to Park Township. See enlarged map of detached are at p. 306b of **Intervenor-Appellee City of Holland's Appendix**. This

---

[4]While the Appellants do not cite MCL 600.631 as a basis for jurisdiction, the same underlying issues are relevant.

parcel is surrounded on three sides by territory within the City of Holland and to the north by Lake Macatawa, which is a significant body of water over which no bridges are located or are even near the affected parcel. Obviously, detaching such a parcel from the City of Holland would create an "island" for which municipal services could hardly be provided in a reasonable manner. There should be an opportunity for a factual development to determine whether there is requisite contiguity to support this "multiple question/joint detachment" petition. As indicated in Gravlin, a circuit court is a more appropriate venue to address these issues as opposed to having the Court of Appeals address it as an original action without the ability to provide testimony and factual findings by the trial court.

COUNTER-STATEMENT OF FACTS

I. FACTUAL BACKGROUND.

As has been said, "there is more to the story" than the Appellants included in their ***less than two page*** statement of facts. This appeal must be framed in the context of a long tortuous history of boundary adjustments between Fillmore Township and the City of Holland. The story begins in 1997 with the City of Holland and Fillmore Township approving a Conditional Transfer Agreement (the "425 Agreement") under Public Act 425 of 1984 regarding boundaries to be adjusted between municipalities. See 425 Agreement, attached at page 16b of **Intervenor-Appellee City of Holland's Appendix**. After four (4) years of protracted negotiations, a 425 Agreement was established for an orderly process for the following:

- property would be transferred into the City of Holland;
- the City of Holland would extend utilities to the property covered by the 425 Agreement;
- the City of Holland would sell water under a wholesale water contract to Fillmore Township in an area south of the 425 Agreement area; and
- the City of Holland and Fillmore Township would share tax revenue generated during the term of the 425 Agreement.

See Id.

In December of 1997, qualified electors within Fillmore Township filed a petition calling for a referendum election on the 425 Agreement pursuant to MCL 124.25. On February 12, 1998, ***the 425 Agreement was defeated in Fillmore Township***.[5]

On September 25, 1998 and November 20, 1998, property owners within Fillmore

---

[5]The vote in Fillmore Township was 335 in favor and 326 in opposition to the referendum on the 425 Agreement.

Township filed annexation petitions to have approximately 1,100 acres annexed to the City of Holland in State Boundary Commission Docket No. 98-AP-9 and 98-AP-12. The State Boundary Commission approved the annexation petitions and as a result, approximately 1,100 acres were annexed into the City of Holland from Fillmore Township.

On February 4, 2000, qualified electors within Fillmore Township filed a detachment petition with the Michigan Secretary of State seeking to reverse the order of the Boundary Commission and detach the approximately 1,100 acres recently annexed into the City of Holland. The detachment petition was a "single detachment petition" meaning it involved one township (Fillmore Township) and one city (City of Holland). See detachment petition, attached at p. 154b of **Intervenor-Appellee City of Holland's Appendix**. On August 8, 2000, an election was held and the detachment petition was defeated by a vote of 3,917 to 2,614.[6]

After the expiration of the two year statutory waiting period, the Appellants developed a new strategy ***to leverage*** township detachment voters against the voters of the City of Holland by filing a "multiple question/joint detachment" petition.[7] This is the petition that was before the Court of Appeals as an original action for a writ of mandamus after the Appellee Secretary of State ***properly refused*** to certify the claimed petition for an election. The Appellants' "multiple

---

[6]The votes within the City of Holland and Fillmore Township were counted together in arriving at the result under what is referred to as the "common majority" voting scheme. See MCL 117.9.

[7]In its amicus curiae brief, the Michigan Township Association boldly asserts that "what is good for the goose is good for the gander" in terms of the voting process regarding detachment for cities and township. See p. 2 of Michigan Township Association's amicus brief. This is ***not the case*** when a township (i.e. Fillmore Township in this case) contrives a process that is not authorized by the Home Rule Cities Act and one that violates the Michigan and U.S. Constitutions. The Court will note that a "common majority" scheme is not applicable under any other statutory voting requirement dealing with annexation or other boundary adjustments between municipalities.

question/joint detachment" petition is unprecedented, in that it seeks to combine ***four different detachment petitions which were circulated in four separate townships with four non-contiguous parcels located in four separate townships into one ballot issue***, as follows:

1st Petition:	City of Holland-Fillmore Township;
2nd Petition:	City of Holland-Laketown Township;
3rd Petition:	City of Holland-Holland Charter Township; and
4th Petition:	City of Holland-Park Township.

As opposed to having Fillmore Township voters vote on the detachment of property from the City of Holland to Fillmore Township, the "multiple question/joint detachment" petition would have Fillmore Township voters voting on detachments into Laketown Township, Holland Charter Township, and Park Township.[8] See maps of individual townships, attach at p. 220b of **Intervenor-Appellee City of Holland's Appendix**. The same is true for voters in each of the other respective townships. In reality, this "multiple-question/joint detachment" petition seeks ***cross fertilization*** of voters in five units of government on four separate parcels of property. As will be discussed later, this aggregation of these petitions is being used to overwhelm the City of Holland voters under what is known as a common majority voting scheme applicable to detachment. See MCL 117.9.

The Appellants' "multiple question/joint detachment" petition includes, as previously

---

[8]Recognizing the mischief that can occur, the Michigan Township Association has even "backed off" its original position in this case and now asserts the votes ***should not*** be aggregated ***if one of the townships*** rejects the proposal. According to the Michigan Townships Association's position, it is irrelevant if residents of the City of Holland approve or reject any one or more of the ballot questions. Apparently, the Michigan Townships Association would have this Court interpret the Home Rule Cities Act to create a new "uncommon majority rule" for townships.

indicated, the approximately 1,100 acres in Fillmore Township.[9] However, it also includes ***minuscule parcels*** in Holland Charter Township, Laketown Township, and Park Township. The acreage of the four parcels proposed to be detached from the City of Holland compared to the gross land area of the other respective Township is delineated as follows:

Township	Parcel	Total Area in Township
Fillmore Township	1054 acres	18,270 acres
Laketown Township	***.77 acres***	13,573 acres
Holland Charter Township	***3.33 acres***	17,573 acres
Park Township	***1.27 acres***[10]	13,643 acres

See legal descriptions attached at p. 224b of **Intervenor-Appellee City of Holland's Appendix**. See map of proposed detachment area attached at p. 226b of **Intervenor-Appellee City of Holland's Appendix**.[11]

Judging from the size of the parcels in Laketown Township, Holland Charter Township, and Park Township, it is ***plainly apparent*** that the Appellants have an ***ulterior motive***. By aggregating these small parcels into one detachment petition, the Appellants are attempting to

---

[9]Of the approximately 1100 acres, the only property that is not included in this "multiple question/joint detachment" petition is a tax-exempt parcel owned by Faith Christian Center Church. Exempting the church property would create another island in Fillmore Township.

[10]The Appellants have attempted to establish "acquatic contiguity" by claiming that the riparian rights associated with City of Holland parcel somehow establishes contiguity to Park Township. However, Lake Macatawa separates this parcel from Park Township. Nonetheless, if this contention is accepted, the parcel would be 5.88 acres.

[11]Even though the Home Rule Cities Act requires that the Appellants submit a map of the parcels to be detached in filing their petition, they have ***conveniently omitted*** it as an attachment to their complaint. See MCL 117.11. Considering the Appellants are attempting to ***unnecessarily fast-track*** this matter and not deal with any factual issues, it is not surprising that it was not included.

leverage a larger number of township voters against the City of Holland than would be the case if the Appellants correctly filed one detachment petition and voters in Fillmore Township and the City of Holland voted under the "common majority" voting scheme. Nonetheless, the Appellants would like this Court ignore the mandates of the Home Rule Cities Act and order the Appellee Secretary of State to submit a "multiple question/joint detachment" petition to one election where all five municipalities vote collectively under the common majority voting scheme.

To understand the effect of the Appellants' ***tactical move,*** it is important to recognize the origin and the number of voters in a "single detachment" petition in comparison to the origin and number of voters in this "multiple question/joint detachment" petition which are delineated as follows:

Single Detachment Petition

Municipality	Registered Voters
City of Holland	19,771
Fillmore Township	1,854
Total	***21,625***

Multiple Question/Joint Detachment Petition

Municipality	Registered Voters
City of Holland	19,771
Fillmore Township	1,854
Laketown Township	4,166
Holland Charter Township	15,221
Park Township	11,989

Total ***53,001***[12]

See statements of registered voters attached at p. 228b of **Intervenor-Appellee City of Holland's Appendix**. By adding only ***1.27 acres*** (under a theory of "aquatic contiguity" with Park Township), the Appellants have effectively leveraged an ***additional 11,989 voters*** in Park Township. By adding another ***3.33 acres*** in Holland Charter Township, the Appellants have further leveraged an ***additional 15,221 voters*** in Holland Charter Township. Lastly, by adding a parcel of ***.77 acres*** in Laketown Township, the Appellants have added ***additional 4,166 voters*** in Laketown Township. In sum, the Appellants have attempted to amass a total of ***31,376 additional voters*** to the 1,854 within Fillmore Township voters by filing this unauthorized "multiple question/joint detachment" petition.

The Court's cursory review of the legal descriptions and map of the proposed detachment areas shows that the respective township parcels have ***no geographic relationship*** to each other. See p. 224b and 306b of **Intervenor-Appellee City of Holland's Appendix**. This cannot be more adequately illustrated than with the location of the parcel on Lake Macatawa which is proposed to be detached to Park Township. See p. 306b of **Intervenor-Appellee City of Holland's Appendix**. Park Township is divided by Lake Macatawa with a portion of the Township located on the north side of Lake Macatawa and a portion on the south side. Michigan law requires that a parcel to be detached from a city must be contiguous to the surrounding township.[13] In this case, the Appellants would like this Court to believe that this small parcel in

---

[12]The number of registered voters for the City of Holland, Holland Charter Township, Laketown Township, and Park Township from the November 5, 2002 general election.

[13]See Genesee Township v. Genesee County, 369 Mich 592, 120 NW2d 759 (1963); Owosso Township v. City of Owosso, 385 Mich 587, 189 NW2d 421 (1971).

City of Holland, which is on the south side of Lake Macatawa has some "aquatic contiguity" to Park Township as located on the north side of Lake Macatawa.[14] Not only is this legally flawed, but the proposed parcel to be detached from the City of Holland to Park Township would create an ***enclave*** township parcel surrounded by the City of Holland. The parcel is approximately ***5.8 driving miles*** from Park Township to the north and as a result, a person must travel on land through the City of Holland, across a bridge, pass through another township (Holland Charter Township) to finally reach the portion of Park Township to which this proposed parcel would ultimately be "connected." This parcel is also .3 miles east of a portion of Park Township which is located on the south side of Lake Macatawa. Due to this distance, general municipal services by Park Township for this parcel would be unreasonably expended to merely serve this small enclave parcel.

II. PROCEDURAL BACKGROUND.

This case began when Appellants filed an original mandamus complaint against the Appellee Secretary of State and the Bureau of Elections in the Court of Appeals on December 17, 2002. At this time it was merely an action against the Appellee Secretary of State and the Bureau of Elections. For some reason, the Appellants apparently thought it was ***unnecessary*** to include the City of Holland as a party as well as the other affected townships, even though they would either be gaining or relinquishing property as a result of this process.[15] To protect its

---

[14]Lake Macatawa is a navigable water under the jurisdiction of the United States through the Army Corps of Engineers.

[15]Please see the article entitled "Detachment From Home Rule Cities in Michigan" by Diane Marie Bowman for a comprehensive discussion of the effects of detachment. This article is attached at p. 236b of **Intervenor-Appellee City of Holland's Appendix**.

interest and to contest this mandamus action, the City of Holland filed a motion to intervene in this case. Also at this time, the Michigan Township Association and the Michigan Municipal League filed motions to file amicus curiae briefs.

On May 19, 2003, the Court of Appeals ordered that the mandamus action be held in abeyance pending a decision in the case of Casco Township v. Secretary of State. The Court of Appeals also granted the City of Holland's motion to intervene and to allow the Michigan Township Association and the Michigan Municipal League to file amicus briefs. On March 25, 2004, the Court of Appeals affirmed the decision of the Ingham County Circuit Court regarding the Casco Township case. On May 6, 2004, the Court of Appeals denied Appellants' complaint for mandamus based upon the Casco Township decision.

On June 17, 2004, the Appellants filed an application for leave to appeal. On October 8, 2004, this Court granted application for leave to appeal indicating that it would be argued and submitted together with Casco Township v. Secretary of State. 471 Mich 890, 687 NW2d 597 (2004).

III. BRIEF HISTORY OF DETACHMENT.

The detachment process is a very arcane area of the law and, as a result, it would be instructive to provide a brief overview history of the process.[16] Throughout the 1800's and until the passage of the Constitution in 1908, the Michigan Legislature (as opposed to local municipalities) dealt with the changing of municipality boundaries. This included the detachment process, but also involved consolidation, incorporation, vacation, and disincorporation. In 1908, the Constitutional Convention authorized the Legislature to set forth a general law of

---

[16]An article entitled "Detachment from Home Rule Cities in Michigan" by Diane Marie Bowman is attached at p. 236b of **Intervenor-Appellee City of Holland's Appendix**.

incorporation for municipalities. Article 8, Section 20, Constitution 1908 provided as follows:

> "The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit the rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts."

This revision substantially changed the process for incorporating cities and villages. The reason for the change was described in the debates as follows:

> "The foregoing is an entirely new section designed to work a wholesome legislative reform. One of the greatest evils brought to the attention of the Convention was the abuse practiced under local and special legislation. The number of local and special bills passed by the last legislature was 415, not including joint and concurrent resolutions. The time devoted to the consideration of these measures and the time required in their passage through the two houses imposes a serious burden upon the state. This section, taken in connection with the increased powers of local self-government granted to cities and villages in the revision, seeks to effectively remedy such condition. This provision is believed to be far-reaching in its consequences. The evils of local and special legislation have grown to be almost intolerable, introducing uncertainty and confusion of the laws, and consuming the time and energy of the legislature which should be devoted to consideration of measures of a general character. By eliminating this massive legislation, the work of the legislature will be greatly simplified and improved."

Debates, Constitutional Convention, 1908, Volume 2, p. 1422 - 1423.

In addition to authorizing the Legislature to provide for a general law of incorporation of cities and villages, the 1908 Constitution explicitly prohibited the Legislature from passing local and special acts which were used to change municipal boundaries. Article 5, Section 30, Constitution 1908 provides as follows:

> "The legislature shall pass no local or special act in any case where a general act can be made applicable, and where a general act could be made applicable shall be a judicial question. No local or special act, excepting acts repealing local or special acts in effect January 1, 1909, and receiving a 2/3 vote of the legislature shall take effect until approved by a majority of electors voting thereupon in the district to be affected."

Tracking the constitutional changes, the Legislature passed the Home Rule Cities Act. MCL 117.8 of the Home Rule Cities Act provides that "the question of making the proposed

incorporation, consolidation, or change of boundary shall be submitted to the qualified electors of the district to be affected."

The effect of these constitutional and statutory changes was to shift control over the process from the Legislature to the local municipalities. However, in 1970, the Michigan legislature amended the Home Rule Cities Act. The intent of the revision was to end the political division between units of government which arose in the back and forth detachment and annexation of territory to cities. Prior to the 1970 amendment, annexation petitions were filed with the appropriate governmental body and submitted for election to qualified electors of the district to be affected. Instead, the statutory amendment re-directed annexation petitions to a newly created Boundary Commission under the State Boundary Commission Act, MCL 123.1001, et. seq. The Supreme Court explained these changes in Midland Township v. Boundary Commission, 401 Mich 641, 259 NW2d 326 (1977), as follows:

> "Before creation of the State Boundary Commission, the procedures for the incorporation, consolidation, or alteration of the boundaries of cities were set forth in the Home Rule Cities Act. By enactment separate from that Act, the Commission was created in 1968 with authority limited to incorporation and consolidation of cities and villages. The powers of the Commission were extended to annexations by a 1970 amendment of the annexation procedures of the Home Rule Cities Act." Id. at 650.

The shifting of annexation petitions to the Boundary Commission created an interesting relationship between the 1968 State Boundary Commission Act and the Home Rule Cities Act. The Supreme Court in Midland Township explained the relationship:

> "The 1970 amendment provides that the Commission, in acting on petitions for annexation, has 'the same powers and duties' and is to proceed 'in accordance with the subject to' the 1968 act.[17] Further, the 1970 amendment provides that in the event of a

---

[17]Footnote 19 of the Midland Township case provides:

> "Except as provided in subsection (1) and (8), a petition or resolution for annexation of

'conflict between the provisions of this act' and the 1968 act, the provisions of the 1968 act 'shall govern.'[18] By its terms, the 1970 amendment makes no change or dispensation of any requirement of the 1968 act.

While the 1970 amendment provides for the resolution of conflicts between it and the 1968 act, the incorporated act, the 1968 act 'shall govern' the procedures to be followed appear to be straightforward and uncomplicated. The Commission, established under the 1968 act, is to process petitions for annexation in accordance with the provisions of the 1968 act 'relating to petitions which propose incorporations.' The 1970 amendment, additionally, supplements the provisions relating to the incorporations of the 1968 act with provisions particular to annexation. The 1970 amendment does not, expressly or otherwise, dispense with or change the provisions of the 1968 act incorporated into the Home Rule Cities Act in contrast with *Mok*, there is no express amendment of the 1968 act.

The 1970 amendment provides that provisions of §8 and 8A of the Home Rule Cities Act 'shall not be applicable' to petitions or resolutions filed with the Commission, that the

---

territory shall be filed in the Lansing office of the State Boundary Commission. The Commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The Commission, in proposing and approving, denying or revising a petition or resolution for annexation, shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of Public Acts of 1968, relating to petitions which propose incorporations. MCLA 117.9(2); MSA 5.2088(2)."

[18]Footnote 19 of Midland Township provides:

"In the event of a conflict between the provisions of this Act and Act No. 191 of the Public Acts of 1968, being sections 123.1012, 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or which territory is to be annexed. However, when territory is proposed to be incorporated as a city only, the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state agency board which holds the record legal title to the entire area of land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township." MCLA 117.9(1); MSA 5.2088(1).

provisions of §14 of the Home Rule Cities Act 'shall not be applicable' to certain annexations approved by the Commission except as in the 1970 amendment provided, and that from the effective date of the 1970 amendment so long as the 1968 act is in effect annexation of territory from a township or village to a home rule city shall be provided in this section and no other means of annexation shall be affected.'" Id. at 660-661.[19]

[19]Footnote 20 of Midland Township states: "MCLA 117.9(9)-117.9(11); MSA 5.2088(9)-5.2088(11)."

SUMMARY OF ARGUMENT

The Appellants have filed an unprecedented "multiple question/joint detachment" petition that includes four townships and one city. Analytically, it is important that this Court ***separate the two issues*** that the Appellants have conveniently combined and truncated. The first involves whether the Appellants should be permitted to file one petition involving multiple townships and conceivably multiple cities.[20] The second and very crucial issue that the Appellants ignore is whether the votes in a detachment election involving multiple townships and cities should be aggregated (allowing townships to leverage votes and overwhelm voters in a city).

The Appellants' interpretation of the Home Rule Cities Act would clearly invade the providence of the Legislature and amount to a "rewriting" of its statutory provisions. The Home Rule Cities Act unambiguously limits the filing of a detachment petition to a "single detachment." The Legislature in MCL 117.11 explicitly used the singular (as opposed to the plural) in referring to a township. The City of Holland invites this Court to examine other sections of the Home Rule Cities Act regarding boundary adjustments. It will discover that the sections likewise ***differentiate*** between the singular and plural and supports the interpretation that detachment is limited to a "single detachment" petition. The Appellants' interpretation rewrites unambiguous language to include "multiple townships" by ***magically transforming words*** that are clearly in the singular to the plural. Moreover, it "expands" the plain meaning of words to

---

[20]If the Appellants are allowed to pursue this "vote enhancing detachment technique," it is conceivable that townships in Southeast Michigan would "stack" even more townships against one or more cities to distort the detachment and boundary adjustment process.

suit its interpretation.[21] Rules of statutory interpretation clearly do not allow a court to invade the Legislature's role and rewrite provisions of the statute.

The Appellants also fail to address in their brief a fundamental flaw. The Appellants' "multiple question/joint detachment" petition ***assumes*** that electors in one township (i.e. Fillmore Township) are "qualified electors" in another township (i.e. Laketown Township). The Michigan Constitution authorizes the Legislature to define residency for purposes of being a "qualified elector." Election law clearly limits "qualified elector" status to electors residing in a particular township. The Appellants' "multiple question/joint detachment" petition would have voters that are qualified electors in Fillmore Township to also be qualified electors in Park, Holland, and Laketown townships, even though they do not reside there. This would clearly amount to a violation of the "qualified elector" requirement.

The Appellants' "multiple question/joint detachment" petition also fails to satisfy the contiguity requirement under common law. In this case, the Appellants have combined parcels that have no geographic relationship to each other. The only purpose of their selection was to leverage the number of votes in the surrounding townships against the City of Holland. If this election is held and detachment approved, it would result in creating an enclave or island which would be physically and geographically separated from the rest of the township.

The Appellants' cannot point to any authority to support its untenable position that the votes in all five municipalities should be combined. In Williamston, the court addressed the ***singular issue*** of whether the votes should be combined in one township and one city (not in one

---

[21]In its decision in the Casco Township case, Judge Zahra improperly interpreted the plain meaning of the Home Rule Cities Act by somehow concluding that the phrase "district to be affected" was to be construed broadly. There is no statutory support to read this conclusion and it would allow courts to "make law."

city and four townships). Cook articulates the concern with such a voting scheme and Walsh follows Cook's direction. Even more importantly, combining the votes in such a single election would violate the equal protection clause of the U.S. and Michigan Constitutions. As the Appellants also point out, voting is a ***fundamental right*** (once it is granted by the Legislature) and must be protected against dilution. The Appellants' petition does not survive either the strict scrutiny or rational basis analysis under the equal protection clause. In fact, no boundary adjustment process under Michigan law allows voters in one municipality to unilaterally determine the "fate" of the vote and override voters in another municipality. The Appellants' contrived petition in this case is one of the most egregious examples of the ***inherent mischief*** of "multiple question/joint detachment" petitions because it leverages votes from other townships to further dilute the vote in the City of Holland. This is a ***flagrant violation*** of the Michigan and U.S. Constitutions.

LAW AND ARGUMENT

I. THE APPELLANTS ARE CORRECT THAT THE HOME RULE CITIES ACT IS UNAMBIGUOUS, BUT THEY ARE INCORRECT THAT THE STATUTE ALLOWS FOR THE FILING OF A "MULTIPLE QUESTION/JOINT DETACHMENT" PETITION.

A. The plain language of the Home Rule Cities Act does not allow the filing of a multiple question/joint detachment petition.

The Home Rule Cities Act unambiguously does not allow for the filing of a "multiple question/joint detachment" petition. This issue is unequivocally one of statutory interpretation.[22] This Court has stated that when the language of a statute is clear and unambiguous, judicial construction is neither required nor permitted and the court must merely interpret the language. City of Grand Rapids v. Crocker, 219 Mich 178, 189 NW 221 (1922); People v. Borchard-Ruhland, 460 Mich 278, 597 NW2d 1 (1999). In other words, where the language of a statue is clear and explicit, the literal construction should be given to it. Kubrik v. Children and Family Services of Michigan, Inc., 171 Mich App 304, 429 NW2d 881 (1988). With regard to whether a law is ambiguous, the court has recently stated that this finding "is to be reached only after all other conventional means of interpretation have been found applied and wanting." Mayor of City of Lansing v. Public Service Commission, 470 Mich 154, 680 NW2d 840 (2004).[23] At issue

---

[22]As will be explained more fully, the Appellants "truncate" the statutory analysis in this case. There are two separate issues. One is whether a "multiple question/joint detachment" petition can be filed that includes one city and more than one township. The other question is whether all of the votes in the various municipalities should be aggregated under the common majority rule. From the statutory sections and cases that are cited, it is clear that the Appellants motive in truncating the analysis is to use statutory sections and cases that may address only one issue as ones that answer both issues.

[23]This rule of construction was recently pronounced in Klapp v. United Insurance Group Agency, Inc., 468 Mich 459, 663 NW2d 447 (2003). However, it has been well established prior to this case that the standard for determining ambiguity was whether "reasonable minds can differ regarding the meaning of a statute." See In re MCI Telecommunications, 460 Mich 396, 596

is whether the Appellants are permitted under the Home Rule Cities Act to file a "multiple question/joint detachment" petition that involves ***five municipalities:*** the City of Holland, Fillmore Township, Laketown Township, Holland Charter Township, and Park Township. Because the petition involves property in two counties,[24] the relevant statutory provision is MCL 117.11 and provides as follows:

> "When the territory to be affected by any proposed incorporation, consolidation, or change is situated in more than 1 county the petition hereinbefore provided shall be addressed and presented to the secretary of state with one or more affidavits attached thereto sworn to by 1 or more of the signers of said petition, showing that the statements contained in said petition are true, that each signature affixed thereto is a genuine signature of ***a qualified elector residing in a city, village, or township to be affected by the carrying out of the purposes of the petition*** and that not less than 25 of such signers reside in ***each city, village, or township to be affected thereby***. The secretary of state shall examine such petition or affidavits annexed, and if he finds the same conform to the provisions of this act he shall so certify, and transmit a certified copy of said petition and the accompanying affidavit or affidavits to the clerk of ***each city, village, or township to be affected by the carrying out of the purposes of such petition***..." (Emphasis added.)

The Appellants can point to no provision in MCL 117.11 that supports their argument that a "multiple question/joint detachment" petition should be approved by the Appellee Secretary of State. On the contrary, the language of MCL 117.11 is ***plain*** and requires that the Appellee Secretary of State reject the Appellants' "multiple question/joint detachment" petition. In support of this reading, the Legislature included in MCL 117.11 the language "city, village, or township to be affected by the carrying out of the purposes of the petition" on ***two occasions***.

NW2d 164 (1999); See also Sam v. Balardo, 411 Mich 405, 308 NW2d 142 (1981); Heinz v. Chicago Road Improvement Co., 216 Mich App 289, 549 NW2d 47 (1996). In its decision on May 6, 2004, in Casco Township, the Court of Appeals applied that well-established standard that had been articulated by this Court. Notwithstanding, whichever standard is applied, it should not impact the outcome in this case.

[24]If the petition involves property in only one county, the petition is filed with the county board of supervisors. See MCL 117.8.

The inclusion of township in the ***singular*** shows that a detachment can only include ***one township*** (and not four). The fact that this phrase was used ***twice*** in the section provides further support for this unambiguous meaning.

The significance of using township in the ***singular*** is highlighted by other provisions of the Home Rule Cities Act. It is axiomatic that a statute is to be construed as a unified whole to give effect to each of its provision and produce harmony and consistency in the internal workings of the entire statute. Muskegon Building and Construction Trades v. Muskegon Area Intermediate School District, 130 Mich App 420, 343 NW2d 579 (1983), overruled on other grounds by Western Michigan University Board of Control v. State, 455 Mich 531, 565 NW2d 828 (1997). For example, MCL 117.14a involves the procedure for the ***vacation of a city***. Specifically, MCL 117.14a provides in part:

> "...the county clerk, and clerk of the city and ***township or townships affected*** shall be governed by and do and perform all acts required to be performed by sections 8, 9, 10, and 12 of this act with respect to calling and holding an election upon the question petitioned for, the same as though the question were upon the annexation of a part of a city to a ***township***, except that the electors of the city and of the ***township to be affected*** shall each vote separately, ***unless 2 or more townships are to be affected***, in which case the votes cast in such township shall be accumulated and the result of the election of such question in ***such townships*** determined by the total vote therein which is cast for and against such question. In case a 2/3 majority of the qualified electors of such city shall vote in favor of the vacation of the incorporation of the same and a majority of the electors of the ***township or townships to be affected*** shall vote in favor of the annexation of the territory of such ***township or townships***...The assets of any city, the incorporation of which has been vacated, which have not been set aside or encumbered by the city for the payment of the funded debt or other outstanding obligations of the city, shall become the property of the ***township to which the territory of the city is annexed***, or, if annexed to ***2 or more townships, of said townships*** pro rata according to the assessed value of the portion of the city annexed to ***each of the townships*** as shown on the last assessment roles of the city which were approved by the board of review for the city prior to the vacation of incorporation." (Emphasis added.)

The Legislature intentionally specified that the procedure for vacation could include either one single township or "***2 or more townships***." Again, this language was used in ***several instances***

in MCL 117.14a.

The Legislature also ***explicitly distinguished*** between the singular and the plural in MCL 117.6 regarding the altering of boundaries of home rule cities. It provides in part:

> "Cities may be incorporated or territory detached therefrom or added thereto, or consolidation made of ***2 or more cities*** or villages into ***1 city*** or of a city or ***1 or more villages into 1 city, or of 1 or more city or villages*** together with additional territory not included within any incorporated city or village into one city..." (Emphasis added.)

Again, the Legislature's use of the plural in MCL 117.6 is plain.

MCL 117.13 further supports the Legislature's intent to preclude the filing of "multiple question/joint detachment" petitions. It provides that a majority of electors voting on the detachment determine the "change of boundaries prayed for in ***such petition***"and also provides in part:

> "Territory detached from any city shall thereupon become a part of the ***township*** or ***village*** from which it was originally taken..." (Emphasis added.)

In contrast, it does not provide that the detached territory shall become part of the ***townships*** (plural) or ***villages*** (plural) from which ***they*** were originally taken.

The Legislature's intent is equally clear in MCL 117.11. The Legislature specifically chose to allow only the detachment of territory to ***one township*** and ***one township only.*** If it had intended otherwise, it would have used language similar to the phrases included within MCL 117.14, MCL 117.6, and MCL 117.13. This distinction is unmistakable.

The Appellants point to the use of the word "each" in MCL 117.11 in arguing that a detachment petition can include multiple townships. In doing so, the Appellants fail to recognize the plain meaning of the word "each." It is clear that words and phases should be construed and understood according to their common and approved usage. Royal Globe Insurance Company v. Frankemuth Mutual Insurance Company, 419 Mich 565, 357 NW2d 652 (1984). When words are not defined in the statute, a court may consult dictionary definitions.

Cornerstone Investments, Inc. v. Cannon Township, 231 Mich App 1, 585 NW2d 41 231 Mich App 1, 585 NW2d 41, reversed on other grounds 459 Mich 908, 589 NW2d 769 (1998). According to Black Law Dictionary, "each" is defined as follows:

> "a distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned; every one of two or more persons or things, composing the whole, ***separately considered.*** The effect of this word, used in the covenant of a bond, is to create a several obligation..." (Emphasis added.)

Conspicuously absent from this definition is any mention of "each" somehow ***transforming*** the singular into the plural. Moreover, the Court of Appeals have followed the plain meaning of "each" in determining the items in the list should be considered separately. See Dimas v. Macomb County Election Commission, 248 Mich App 624, 639 NW2d 850 (2002). In this case, the Court of Appeals addressed whether a petition for a recall must include each and every reason for the recall. Specifically, the Court analyzed MCL 168.952 which provides in part:

> "A petition for the recall of an officer shall meet all of the following requirements:
>
> (c) State clearly ***each reason*** for the recall. Each reason for the recall shall be based on the officer's conduct during his or her current term of office. The reason for the recall may be typewritten." (Emphasis added.)

The Court determined that "each" does not mean that "each and every" or "all" reasons for the recall must be included in the petition. Equally as important for this case, the Court did not find that the use of the word "each" ***transformed*** the word it modified ***from the singular to the plural.***

While the definition of "each" would mean that the detachment petition procedure applies to a city, village, or township, it does not somehow suggest that this procedure can be used to have one petition include ***four separate townships and one city.*** The Appellants attempt to distort the meaning of "***each***" and the Legislature's intent cannot be warranted.

The Legislature's use of the word "or" is also important in construing MCL 117.11. On a number of occasions, the Legislature used the phrase "each city, village, ***or*** township." According to Blacks Law Dictionary, "or" is defined in part:

> "A disjunctive particles used to express ***an alternative or to give a choice of one among two or more things.*** It is also used to clarify what has already been said, in which such cases, means 'in other words,' 'to-wit,' or 'that is to say.' The word or is to be used as a function word to indicate an ***alternative between different or unlike things.***" (Emphasis added.)

Michigan courts have followed the plain meaning of "or." Caldwell v. Chapman, 240 Mich App 124, 610 NW2d 264 (2000)(holding that the use of the word "or" refers to a choice between two or more things); Beauregard-Bezou v. Pierce, 194 Mich App 388, 487 NW2d 792 (1992) (similarly holding that the use of "or" indicates an alternative or choice between two things); People v. Pfaffle, 246 Mich App 282, 632 NW2d 162 (2001)(holding that each of the items in a list that a modified by the word "or" should be considered separately). Similar to the use of the word "each," the Legislature's use of the word "or" in MCL 117.11 does not transform each type of municipality from the singular are to the plural.

B. The Legislature's use of the words "district to be affected" and "a" (as opposed to "the") do not permit the Appellants to file a "multiple question/joint detachment" petition.

The Appellants' statutory argument essentially ***hangs on one sentence*** in MCL 117.9 which provides in part:

> "The district to be affected by such proposed incorporation, consolidation, or change of boundaries shall be deemed to include the whole of ***each city, village, or township*** from which territory is to be taken or which territory is to be annexed." (Emphasis added.)

In doing so, the Appellants again fail to recognize the error of their interpretation. First, the phrase "whole of each city, village, or township" does not contemplate the filing of a "multiple question/joint detachment" petition. As indicated previously, the Legislature explicitly used the

singular in referring to ***each municipality*** including a township and therefore, cannot be construed to mean otherwise.

What the Appellants also fail to realize is that their interpretation does not hold up when taken into account with the ***context*** of MCL 117.9.[25] After the sentence the Appellants continually highlight in regard to their argument, MCL 117.9 provides as follows:

> "***However, when a territory is proposed to be incorporated as a city, only the residents of the territory to be incorporated shall vote on the question of incorporation.***" (Emphasis added.)

The addition of this second sentence suggests that the Legislature did not intend for a detachment petition to include a city and multiple townships. The use of the word "whole" in the context of the second sentence evidences a ***completely separate meaning.*** "Whole" modifies "each city, village, or township" and would naturally mean the entire area within "each city, village, or township." This meaning is supported by the second sentence which states that "only the residents of the territory to be incorporated shall vote on the question of incorporation." Taken together, these sentences do not lead to the interpretation of the Appellants.

The Appellants and also Judge Zahra in the Casco Township case go beyond the plain meaning of the language. Judge Zahra states:

> "MCL 117.9 (1) explains the meaning of the phrase the 'district be affected' under the HRCA: '[t]he district be affected by each proposed incorporation, consolidation, or change a boundary shall be deemed to include the whole of *each city, village, or township from which territory's be taken or to which territory is to be annexed.* (Emphasis added.) This ***broad definition*** indicates that a single election district is established to determine a change a boundary lines affecting multiple cities, villages, or townships. The Legislature uses general language in describing the 'district be affected,' allowing for the phrase to encompass more than just two cities, villages, or townships.

---

[25]Ironically, the Appellants fault the Court of Appeals for not construing all of the relevant provisions of the Home Rule Cities Act. ***However,*** they fail to analyze relevant language in the very same section it is interpreting.

> Accordingly, because the Legislature refers to a single petition as relates to the 'district be affected' in MCL 117.11, the district be affected is broadly defined to include ***multiple*** cities, villages, ***and*** townships, I conclude that the unambiguous language of the HRCA allows for a single election to be held to detach territory from a city to multiple townships." Casco Township v. Secretary of State, 261 Mich App 386, 398, 682 NW2d 546 (2004). (Emphasis added.)

There is no basis for finding that the definition of "district to be affected" magically transforms the words it modifies (i.e. city, village, or township) from the singular to the plural. Judge Zahra and the Appellants have conveniently inserted words to suggest that the definition includes "multiple cities, villages, and townships." The Legislature never used the word "multiple" and the Legislature also did not use the word "and." Courts ***are not*** at liberty to write in statutory provisions that the Legislature has not seen fit to enact. See Autio v. Proksch Const. Co., 377 Mich 517, 141 NW2d 81 (1966); Great Lakes Steel Corp. v. Michigan Employment Security Commission, 6 Mich App 656, 150 NW2d 547 (1967).

The Appellants also attempt to highlight the Legislature's use of the word "a" as opposed to "the" in arguing that the Legislature really meant the "city, village, or township" should be plural. It cites to cases for the proposition that "the" and "a" should be construed differently. See State Farm Fire and Casualty Company v. Old Republic Insurance Company, 466 Mich 142, 644 NW2d 715 (2002); Massey v. Mandell, 462 Mich 375, 614 NW2d 70 (2000); Robinson v. City of Detroit, 462 Mich 439, 613 NW2d 307 (2000). Each of these cases states that "the" is defined to be a definite article (i.e. used before a word with a specifying or particular rise in effect) and "a" is an indefinite article that has generalizing force. See Id.

However, the Appellants go even further to state that the use of the word "a" suggests that the modifying word should be ***transformed into the plural*** (i.e. township becomes townships). There is absolutely no basis for this construction. In fact, the Appellants misconstrue the

language in Robinson when they argue that the use of the word "the" before a singular noun "contemplates one." In making the statement, the Court in Robinson was addressing the language "the proximate cause" as opposed to "a proximate cause." The Court stated:

> "Further, recognizing that 'the' is a definite article, and 'cause' is a ***signal noun***, it is clear that the phrase the 'proximate cause' contemplates one cause." Id. at 462. (Emphasis added.)

What this Court ***did not provide*** is that if the Legislature used the word "a proximate cause" (singular) that this really meant "causes" (plural). By negative implication, the Appellants merely assume that this is what the Court intended. However, the plain meaning of these words does not allow what is clearly singular to be transformed to the plural.

C. The Appellants' petition is fundamentally flawed because it assumes that "qualified electors" in one township are also "qualified" in the other three townships.

The Appellants' "multiple question/joint detachment" petition incorrectly assumes that "qualified electors" in one township are also qualified electors in three other townships. The Appellants ***fail to even address*** this fundamental flaw in their brief. Qualified electors in Fillmore Township are not also qualified to vote in Laketown Township, Holland Charter Township, and Park Township. The Appellants' interpretation of MCL 117.11 fails to recognize the ***fundamental requirement*** that the electors be "qualified electors." As indicated previously, MCL 117.11 provides in part:

> "...that each signature affixed thereto is the genuine signature of a ***qualified elector*** residing in a city, village, or township to be affected by the carrying out of the purposes of the petition..." (Emphasis added.)

In election law, the term "qualified elector" is a term of art. As defined by MCL 168.10 under Michigan's Election Law, MCL 168.1 et. seq., "qualified elector" is defined "...to mean any

person who possesses the qualifications of an elector as prescribed in Section 1 of Article 2 of the State Constitution and ***has resided in the city or township thirty days***." (Emphasis added.)[26] Section 1, Article 2 of the Michigan Constitution provides:

> "Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election, except as otherwise provided in this constitution. ***The legislature shall define residence for voting purposes***."

The Appellants' "multiple question/joint detachment" petition includes persons residing in the City of Holland, Fillmore Township, Laketown Township, Holland Charter Township, and Park Township, who would vote on the same proposition. A fundamental flaw with including residents from all of these townships is that particular residents are only "qualified electors" in the city or township in which they reside. In other words, an elector in Fillmore Township is not a "qualified elector" in the City of Holland. Moreover, an elector in Fillmore Township is not a "qualified elector" in Holland Charter Township. Appellants' "multiple question/joint detachment" petition obliterates this significant distinction and would have this Court ignore the plain meaning of the term "qualified elector."

The Appellants' petition also fails to satisfy the requirement that "qualified electors" be "affected" by the petition. MCL 117.11 mandates that the "qualified electors" be "affected by the carrying out of the purposes of the petition..." Despite this requirement, it is clear that the

---

[26]The Michigan Township Association cites to Renne v. Oxford Township for the internally inconsistent proposition that a resident can be a qualified elector in more than one municipality. 380 Mich 39, 155 NW2d 852 (1968). Renne has no application to this case. In fact, it analyzes Section 6, Article 2 of the Michigan Constitution (governing the vote on increases in the ad valorem tax rate limitation). Michigan election law, and specifically MCL 168.10, govern the definition of a "qualified elector." Neither 168.10 nor Section 1, Article 2 of the Michigan Constitution explicitly or implicitly suggest that a resident can be a "qualified elector" in more than one municipality.

qualified electors in Fillmore Township are not ***"affected"*** by the vote of qualified electors in Laketown Township, Holland Charter Township, and Park Township. The Appellants' "multiple question/joint detachment" petition strains the requirement that "qualified electors" be "affected" by the detachment petition. According to Blacks Law Dictionary, "affect" means as follows:

> "To act upon; to influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. To lay hold of or attack (as a disease does); to act or produce an effect or result upon; or to impress or influence (the mind or feelings); to touch."

The Appellants' underlying assumption is that the "qualified electors" in Fillmore Township are "affected" by the "qualified electors" in the other three townships. The definition of "affected" requires at a very minimum some act to change something. The Appellants' "multiple question/joint detachment" petition ***mistakenly assumes*** that qualified electors in respective townships "affect" qualified electors in other townships merely because they are voting on the same proposition. This ***convoluted reasoning*** or lack of reasoning confuses the meaning of the Home Rule Cities Act and is an impermissible interpretation.

II. THE APPELLANTS' "MULTIPLE QUESTION/JOINT DETACHMENT" PETITION INCLUDES PROPERTY THAT FAILS TO SATISFY THE CONTIGUITY TEST.

A. The Appellants' "multiple question/joint detachment" petition fails to satisfy the common law contiguity requirement.

Michigan law is clear that changes in the boundary of municipalities must satisfy the contiguity test. Genesee Township v. Genesee County, 369 Mich 592, 120 NW2d 759 (1963); Owosso Township v. City of Owosso, 385 Mich 587, 189 NW2d 421 (1971). In Genesee Township, the Michigan Supreme Court held that parcels touching only by virtue of a 100 foot road right-of-way were not contiguous. The Court reasoned that "no claim is made that the right-of-way could be used for purposes of travel or the transmission of utility services or

otherwise as subject to such measure of control as would render it adaptable to ordinary municipal purposes." Id. at 601.

In Genesee Township, the court cited to the U.S. Supreme Court decision in Ocean Beach Heights, Inc. v. Brown, Crummer Investment Co., 302 US 614, 82 L Ed 878, 50 S Ct 385 (1938). In this case, certain electors residing in Dade County, Florida, on the west side of Biscayne Bay, incorporated a town. The municipality included approximately 16 square miles, 14 of which were on the west side of the bay. Bonds were issued and there was a subsequent challenge that the annexation was improper. The U.S. Supreme Court agreed and invalidated the annexation on the basis that the municipalities were not contiguous because they were separated by the bay.

A similar result was reached in Delavan v. City of Delavan, 176 Wis 2d 516, 500 NW2d 268 (1993). In Delavan, land owners petitioned for annexation to the City of Delavan. Parts of the annexed property included a peninsula which extended into a lake. The court held that the properties were not contiguous due to the separation by approximately 400 feet of water. The court stated that "...we also conclude that we should not so expand the definition of 'contiguous' as to place distant lakeshore property owners at risk of being annexed by neighboring municipalities." Id. at 529.

Here, the Appellants' are attempting to establish "***aquatic contiguity***" between a parcel located on the northern shore of Lake Macatawa with Park Township as located on the southern shore of Lake Macatawa. The Appellants' petition is identical to the issue in Ocean Beach Heights, Inc. and Delavan. In each of these cases, there was a body of water separating the parcels and the adjoining townships. Based upon these cases, the Appellants cannot satisfy the requisite contiguity test.

B. The Appellants' petition creates an island or enclave in violation of common law.

The parcel in the City of Holland which is allegedly contiguous to Park Township would constitute an island or enclave. Michigan courts have prohibited the creation of an enclave in changing municipal boundaries. City of Saginaw v. Saginaw County Board of Supervisors, 1 Mich App 65, 134 NW2d 378 (1965); Pittsfield Township v. City of Ann Arbor, 86 Mich App 229, 274 NW2d 466 (1978). An enclave has been defined as "a tract of territory enclosed within a foreign territory." City of Saginaw, 1 Mich App at 69.

In Pittsfield Township, the Court of Appeals addressed whether the annexing of six parcels of land from Pittsfield Township would result in an enclave. The parcels were an irregularly shaped piece of land consisting of 700 acres with only 330 of which were physically connected with a city boundary. The court held that this annexation would create an enclave.

The Appellants' petition is ***patently more egregious*** than the issue in Pittsfield Township. The Appellants' petition involves land that has ***no geographic connection*** to Park Township. To the south, the parcel is separated by a navigable body, Lake Macatawa. To reach Park Township to the east, a person would have to travel approximately ***5.8 miles*** through the City of Holland and cross a bridge to Holland Charter Township before reaching Park Township. Moreover, the parcels are .3 miles to the east of the portion of Park Township on the north side of Lake Macatawa. There is no question that the parcels proposed to be detached to Park Township would be an enclave. Moreover, the difficulties of providing basic municipal services (i.e. fire, police, etc.) to these parcels would render municipal services impractical.

III. THE HOME RULE CITIES ACT PROHIBITS THE APPELLEE SECRETARY OF STATE FROM SUBMITTING A VOTE ON A "MULTIPLE QUESTION/ JOINT DETACHMENT" PETITION IN THE CITY OF HOLLAND, FILLMORE TOWNSHIP, LAKETOWN TOWNSHIP, HOLLAND CHARTER TOWNSHIP, AND PARK TOWNSHIP.

A. The Appellants incorrectly claim that the Home Rule Cities Act requires that there be an election which aggregates all of the votes in the City of Holland, Fillmore Township, Laketown Township, Holland Charter Township, and Park Township.

The Appellants' argument regarding the aggregation of votes in all five of the municipalities ***hangs on one sentence*** in MCL 117.9 which provides in part:

> "The district to be affected by such proposed incorporation, consolidation, or change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or which territory is to be annexed."

In doing so, the Appellants fail to recognize the error of their interpretation. First, the phrase "whole of each city, village, or township" does not contemplate the aggregation of votes within multiple townships and a city. As explained previously, what the Appellants also fail to realize is that their interpretation does not hold up when taken into account with the ***context*** of MCL 117.9. After for the sentence the Appellants continually highlight in regard to their argument, MCL 117.9 provides as follows:

> "***However, when a territory is proposed to be incorporated as a city, only the residents of the territory to be incorporated shall vote on the question of incorporation.***" (Emphasis added.)

The addition of this second sentence suggests that the Legislature did not intend for a detachment petition to include a city and multiple townships. The use of the word "whole" in the context of the second sentence evidences a ***completely separate meaning.*** "Whole" modifies "each city, village, or township" and would naturally mean the entire area within "each city, village, or township." This meaning is supported by the second sentence which states that "only the residents of the territory to be incorporated shall vote on the question of incorporation." Taken together, these sentences do not lead to the interpretation of the Appellants.

This issue of filing a "multiple question/joint detachment" petition was not at issue when

the Court of Appeals dealt with the voting issue in City of Williamston v. Wheatfield Township, 142 Mich App 714, 370 NW2d 325 (1985). In this case, residents of Wheatfield Township submitted a detachment petition requesting detachment of a square mile which had been previously annexed to the City of Williamston. The ***sole issue*** before the court was whether the votes of the City of Williamston and Wheatfield Township should be aggregated in determining the outcome of the petition. On this issue, the court of appeals determined that MCL 117.9 required that the votes be considered together. The court also did state that "there is no ambiguity in the detachment procedure provided for by the Home Rule Cities Act." Id. at 718.

What the Appellants fail to realize is that this language is ***merely dictum*** with respect to this issue. City of Williamston ***only dealt*** with the issue of whether MCL 117.9 requires that the vote for a detachment petition involving a ***single city and a single township*** should be aggregated.[27] Considering that the language in MCL 117.9 refers to a city and township (in the singular), it is understandable why the court reached this conclusion. However, the case at bar involving a "multiple question/joint detachment" petition is ***completely different*** than the situation in the City of Williamston. In this case, the Appellants have requested that the Appellee Secretary of State submit to an election a ballot question proposition which aggregates the votes in one city with not one, but ***four surrounding townships.*** City of Williamston never dealt with this issue and, as indicated previously, the language of MCL 117.9 does not support this ***leverage tactic*** by Appellants.

B. There is no precedent for allowing the aggregation of votes on a detachment petition in more than two municipalities.

---

[27]It is important to note that City of Williamston did not address the constitutionality of aggregating the votes even in "a single detachment."

The only authority in Michigan on this issue, other than the binding Court of Appeals decision in Casco Township, suggests that if an election is to be held among multiple municipalities, the votes ***should not*** be aggregated. This was the process followed in Walsh v. Secretary of State, 355 Mich 570, 95 NW2d 511 (1959).[28] In this case, an annexation petition was submitted covering five parcels of land in two separate townships. An election was held in the City of Lansing, Delta Township, and Lansing Township. ***The votes were counted separately.*** The Supreme Court specifically found this to be a valid process for deciding the annexation issue.

As followed in Walsh, the proper method for counting votes is ***not to aggregate*** them as the Appellants would have this Court require, but rather the votes should be counted separately in each jurisdiction to determine whether the "multiple question/joint detachment" petition has passed. The Appellants seek to unify a joint detachment petition with the multiple vote requirement. These are clearly separate and distinct issues.

IV. IF AN ELECTION IS HELD REGARDING THIS "MULTIPLE QUESTION/JOINT DETACHMENT" PETITION, POLICY CONSIDERATIONS NECESSITATE THAT THE VOTES BE COUNTED SEPARATELY IN THE CITY OF HOLLAND, FILLMORE TOWNSHIP, LAKETOWN TOWNSHIP, HOLLAND CHARTER TOWNSHIP, AND PARK TOWNSHIP.

The precise policy considerations involved in this case were also at issue in Cook v. Kent County Board of Canvassers, 190 Mich 149 (1916). The petition proposed the annexation of territory in both Paris and Wyoming Townships into the City of Grand Rapids. There was a vote held and the voters in the townships split regarding the annexation. The voters in Paris Township voted in favor of the petition while the voters in Wyoming Township opposed it. In

---

[28]This process of separating the votes was also required in Cook v. Kent County Board of Canvassers, 190 Mich 149, 155 NW 1033 (1916).

evaluating whether the votes should be aggregated, the Supreme Court held that this was an impermissible process to use. The court stated as follows:

> "***To permit the favorable majority in that portion of Paris Township to be annexed over, the adverse majority in that portion of Wyoming Township to be annexed would, in our opinion, be contrary to the spirit of section 9 and, we believe, under a fair construction of the language, is likewise contrary to its express terms.***" Id. at 154-155. (Emphasis added.)

The ***same evils*** in Cook are manifest in this case. However, the Appellants have ***raised the stakes*** in this case to have four separate townships voting in addition to the City of Holland. The Supreme Court in Cook was clear that this was ***violative of the spirit of the law*** and should not be permitted. This case is much more egregious than the facts in Cook and, therefore, the result should not be any different.

The Appellants make several efforts to distinguish Cook. First, the Appellants claim that Cook does not apply because the precise language in section 9 (MCL 117.9) of the Home Rule Cities Act no longer exists. While this is true, it has ***no bearing*** on the underlying policy considerations in Cook. The Appellants also claim that the Supreme Court has disavowed Cook when it found Cook to not be controlling in Walsh. There was good reason to find Cook not controlling in Walsh. As indicated previously, Walsh involves a case where the court required that there be a ***separation of the vote*** in multiple municipalities. The policy considerations of Cook are only at issue when there is an aggregation of votes and one municipality or group has leveraged a majority of township voters. As such, there was no reason why the policy considerations in Cook were at issue in Walsh.

The Michigan Township Association asserts that Cook requires:

> "If a majority of the collective total votes favor detachment under the 'package' election and no individual township's electors vote by majority to reject the detachment, the detachment must be declared approved. If an individual township votes by a majority to

> reject the detachment, even though a majority of the total vote taken is in favor of the detachment, detachment of territory from the city to that township should be declared invalid under Cook, supra, or the entire detachment declared defeated under "package" election in Walsh, supra." See p. 17 of Michigan Township Association's amicus brief.

In its ***seductively simple*** analysis of Cook, the Michigan Township Association fails to recognize the distinction between the annexation and detachment processes. Cook involved the annexation process. Annexation is a process in which real property is removed from a township and becomes part of a city. In an annexation process, requiring the separation of votes among townships and a city is important to protect either a city or another township from deciding the "fate" of real property in another township (i.e. voters in all five municipalities deciding if property should be detached annexed from Fillmore Township to the City of Holland). However, the detachment process entails property being removed from a city and then being annexed to a township. It is legally a two step process. In this case, the concern is with voters in five municipalities collectively voting for property to be detached from the City of Holland. In the very least, under the Michigan Township Association's application of Cook, the City of Holland ***should be protected*** by not permitting detachment if its voters reject a certain proposal. However, the Michigan Township Association ignores the injustice that could occur if the City of Holland voters reject a detachment into one of the four townships.

V. THE APPELLANTS' "COMMON MAJORITY" VOTING SCHEME IN BOTH A "SINGLE DETACHMENT" AND IN A "MULTIPLE QUESTION/JOINT DETACHMENT" FAILS TO WITHSTAND CONSTITUTIONAL SCRUTINY UNDER THE EQUAL PROTECTION CLAUSES OF THE U.S. CONSTITUTION AND THE MICHIGAN CONSTITUTION.

A. The Appellants' "common majority" voting scheme in both a "single detachment" and in a "multiple question/joint detachment" scheme fails to survive the strict scrutiny test.

The Fourteenth Amendment of the U.S. Constitution provides that "... No State

shall...deny to any person within its jurisdiction the equal protection of the laws." US Const Amend XIV. The Michigan Constitution contains a provision similar to the Fourteenth Amendment providing that no person shall be denied equal protection of the laws. Const 1963, Art I, Section 2. Michigan courts interpret the state equal protection clause similarly to the Fourteenth Amendment. Gora v. City of Ferndale, 456 Mich 704, 576 NW2d 141 (1998); Sutton v. Cadillac Area Public Schools, 117 Mich App 38, 323 NW2d 582 (1982).

There is a two-tier approach with the level of judicial scrutiny for the equal protection clause. Department of Civil Rights ex rel Forton v. Waterford Township Department of Parks and Recreation, 425 Mich 173, 387 NW2d 821 (1986). Strict scrutiny is applied if a fundamental right or a suspect classification is involved. Crego v. Coleman, 463 Mich 248, 615 NW2d 218 (2000), cert denied 531 US 1074, 121 S Ct 767, 148 L Ed 2d 667 (2001). When strict scrutiny is applied, the burden is on the government to show that its regulation was justified by a "compelling state interest." Schweiker v. Wilson, 450 US 221, 101 S Ct 1074, 67 L Ed2d 186 (1981). To show a compelling interest, the state must show the alleged objective for the legislature's actual purpose for the discriminatory classification and the legislature must have a strong basis and evidence to support that justification. Shaw v. Hunt, 517 US 899, 116 S Ct 1894, 135 L Ed 2d 207 (1996).

It is axiomatic that the right to vote at the local level is a fundamental right and protected under the equal protection clause. Bush v. Gore, 531 US 98, 121 S Ct 525, 148 L Ed2d 388 (2000).[29] In the context of annexation, the Sixth Circuit Court of Appeals has recognized that

---

[29]The U.S. Supreme Court has recognized the effect of "vote dilution" with respect to local governmental units. See Avery v. Midland County, 390 US 474, 88 S Ct 1114, 20 L Ed 2d 45 (1968); Hadley v. Junior College District, 397 US 50, 90 S Ct 791, 25 L Ed 2d 45 (1970).

"where the state agreed to have important municipal decisions made by voters, the equal protection clause must be applied to all within the jurisdiction whose rights are affected." Carlyn v. City of Akron, 726 F2d 287 (1984);[30] See also Kramer v. Union School District, 395 US 621, 89 S Ct 1886, 23 L Ed2d 583 (1969); Cipriano v. City of Houma, 395 US 701, 89 S Ct 1897, 23 L Ed2d 647 (1969).[31]

The Fourth Circuit Court of Appeals has also applied strict scrutiny to an equal protection challenge of an annexation statute. Haywood v. Clay, 573 F2d 187 (4th Cir 1978). In

---

[30]In this case, the Sixth Circuit ultimately concluded that strict scrutiny did not apply to the facts of the case because the state did not previously extend the right to vote to certain electors. This is a ***fundamental distinction*** because once the right to vote is extended the strict scrutiny applies. The Michigan Legislature has explicitly extended the right to vote on detachment to both "qualified electors" of the applicable city and township under MCL 117.11.

[31]Contrary to the suggestion of amicus curiae Michigan Township Association in their arguments before the Court of Appeals, the archaic principles of the U.S. Supreme Court's decision in Hunter v. Pittsburgh, 207 US 161, 28 S Ct 40, 52 L Ed 2d (1907) do not control this case. In Carlyn, the Sixth Circuit explicitly provided:

> "The sweeping language of Hunter and Bolt has been modified in respect to manipulation of municipal boundaries for purposes of race discrimination in voting. See Gomillion v. Lightfoot, 364 US 339, 81 S Ct 125, 5 L Ed 2d 110 (1960). These cases have also been affected by two Supreme Court decisions which held that where the state agreed to have important municipal decisions made by voters, the equal protection clause must be applied to all within the jurisdiction whose rights are affected. Kramer v. Union School District, 395 U.S. 621, 23 L Ed 2d 583, 89 S. Ct. 1886 (1969); Cipriano v. City of Houma, 395 U.S. 701, 23 L Ed 2d 647, 89 S. Ct. 1897 (1969)." Carlyn, 726 F2d at 289.

As a result, the reliance on Midland Township v. State Boundary Commission, 401 Mich 641, 259 NW2d 326 (1977), (especially with respect to federal law) is misplaced.

It should also be noted that the U.S. Supreme Court's decisions in Kramer and Cipriano as well as the Sixth Circuit's decision in Carlyn follow Detroit Edison Company v. East China Township School District No. 3, 247 F Supp 296 (ED Mich), affirmed 378 F2d 225 (6th Cir), cert denied 389 US 932, 88 S Ct 296, 19 L Ed 2d 284 (1967). In Detroit Edison Company, the Sixth Circuit held that Michigan's annexation procedure was not justiciable under the due process or equal protection clauses of the Fourteenth Amendment. Moreover, Detroit Edison Company is distinguishable in that the right to vote was not previously extended.

this case, the South Carolina statute conditioned the holding of an annexation election upon a majority vote of the freeholders in the area to be annexed. The court recognized the U.S. Supreme Court's authority in Hunter v. City of Pittsburgh, 207 US 161, 28 S Ct 40, 52 L Ed 151 (1907) which characterized the state's power over municipal corporations as nearly absolute. However, the court further recognized that subsequent U.S. Supreme Court decisions have shown that the state's exercise of power must conform to the U.S. Constitution when voting is concerned.

The Ninth Circuit Court of Appeals applied strict scrutiny to invalidate an annexation ordinance on the basis that it violated the equal protection clause. Hussey v. City of Portland, 64 F3d 1260 (9th Cir 1995). The court stated that while there is no federal or even a state constitutional right to vote on annexation; however, "once citizens are granted the right to vote on a matter, the exercise of that vote becomes protected by the Constitution even though the state was not obligated to allow any vote at all." Id. at 1263. The court proceeded to strike down an ordinance that required non-residents to consent to annexation as a condition to receiving a subsidy for mandated sewer connections.

Finally, a U.S. District Court within the Sixth Circuit also applied strict scrutiny to test the validity of an annexation statute. Moorman v. Wood, 504 F Supp 467 (ED Ken 1980).

1. Applying a "common majority" voting scheme to a single detachment is unconstitutional.[32]

In Michigan, statutory authority specifically authorizes a "single detachment." See MCL

---

[32]Contrary to the suggestion of the amicus curiae Michigan Township Association, what is good for the goose is not good for the gander when it violates the U.S. Constitution and the Michigan Constitution.

117.6 and 117.11. The statute refer to the "qualified electors" in one township filing an election petition and a vote being held in both the affected city and township.[33] The Court of Appeals has held that in a "single detachment," the votes in the "district to be affected" which includes the city and the township are counted together. City of Williamston v. Wheatfield Township, 142 Mich App 714, 370 NW2d 325 (1985). However, Williamston ***did not address*** the constitutionality of this voting method in light of the heightened judicial scrutiny under the equal protection clause.

Applying the strict scrutiny test under the Federal and Michigan equal protection clauses,[34] there is ***no compelling reason*** for aggregating the votes in both a city and township. In many "single detachments" (and as is the case in the Fillmore Township's first unsuccessful detachment), the township is much smaller than the city. By combining the votes, the votes of the larger city unfairly dilute the votes of the township. Mr. William K. Fahey, counsel for the Appellants, described the process in detachment campaign for Wheatfield Township in 1983:

> "Wheatfield was at ***distinct disadvantage*** to the city under the detachment procedure, since its voting population was half that of the city. To overcome this disadvantage, the detachment advocates had to campaign hard, canvassing door-to-door throughout the township and the city. The message they carried was one of equity and fairness. The original annexation was against their will; it resulted in higher taxes; and even five years after the annexation the city had still not delivered on its promise of 'urban' services to the square mile annexed." "Boundary Adjustment is a Two-Way Street," Michigan Township News, July 1991, p. 9. (Emphasis added.)

In other words, the smaller township is at the mercy of the city's voters. In the previous

---

[33]This should be contrasted with the Appellants' "multiple question/joint detachment" petition which involves one city and four townships.

[34]Ironically, the Appellants acknowledge that the voters in these municipalities have a "fundamental right to vote." See p. 26 of Appellants' brief. However, based on how the Appellants claim the vote should be aggregated (among all four townships and one city), it ignores the import of what the right to vote means.

"single detachment" vote (with Fillmore Township and the City of Holland), the difference in votes was substantial. Currently, the City of Holland has ***19,771*** registered electors while Fillmore Township only has ***1,854***. The equal protection clause under both the U.S. Constitution and the Michigan Constitution does not permit this dilution.

2. Applying a "common majority" voting scheme to a "multiple question/joint detachment" is unconstitutional.

In contrast to "single detachment," the Appellants have employed a different tactic to dilute the votes of the "qualified electors" within the City of Holland. This method is even more ***constitutionally egregious*** than "single detachment." The Appellants would like this Court to require the Appellee Secretary of State to hold one election on a single voted proposition in ***five municipalities*** on ***five completely unrelated parcels of property.*** There is surely ***no compelling reason*** for aggregating the votes in five municipalities. By adding three completely unrelated municipalities, the Appellants have leveraged an ***additional 31,376 voters.*** In doing so, the Appellants are in a position to dilute the City of Holland's ***19,771 voters.***

In addition, allowing "qualified electors" in Park Township (or Laketown or even Holland Charter Township), which have no interest and are not qualified in Fillmore Township, to vote on the same detachment issue cannot be justified under the heightened scrutiny. There is ***no justification*** for allowing these other municipalities to vote on other unrelated township parcels. On this basis, the "common majority" voting scheme under the "multiple question/joint detachment" ***patently fails*** to survive strict scrutiny under the equal protection clauses of the U.S. Constitution and the Michigan Constitution.

B. The Appellants' "common majority" voting scheme fails to even satisfy the rational basis test.

Even if this Court were to consider the more deferential rational basis test, there is no

"reasonable rationale" for the common majority voting scheme. Under the rational basis test, a classification will be upheld if it is rationally related to a legitimate state interest. Yaldo v. North Pointe Insurance Co., 457 Mich 341, 578 NW2d 274 (1998); Vargo v. Sauer, 457 Mich 49, 576 NW2d 656 (1998).

In analyzing the rationale basis for the "common majority" rule, the Court should consider several statutes which permit the changing of municipal boundaries in Michigan:

- Public Act 191 of 1968-State Boundary Commission Act, MCL 123.1001 et. seq.;
- Public Act 425 of 1984-Transfers of Property for Economic Development Projects, MCL 124.21 et. seq.; and
- Act 7 of 1967-Urban Cooperation Act of 1967, MCL 124.501 et. seq.

The State Boundary Commission Act has become the "exclusive means" of annexation of territory from a township or village to a home rule city. MCL 117.9; Shelby Township v. Boundary Commission, 425 Mich 50, 387 NW2d 792 (1986). In general, the State Boundary Commission Act requires that a petition be submitted requesting annexation.[35] If on the date the annexation petition was filed more than one hundred persons reside in the area to be annexed and the affected city and township pass a resolution calling for a referendum, "a referendum on the question of annexation shall be held in ***each*** affected city and township." MCL 123.1011b. Moreover, if a resolution is not passed by both the city and township, an election shall be held. MCL 123.1011b further provides:

---

[35]The structure of the State Boundary Commission also specifically provides for local representation. In particular, two out of three representatives on the Boundary Commission are appointed from the respective counties within the area to be affected. MCL 123.1105. This assures the proper local representation in reaching the decision.

> "...If the majority of the electorate voting on the question in each city and township in which a referendum was held, ***voting separately,*** approve the annexation, the annexation shall effective on a date set by order of the commission, otherwise the annexation shall not take effect." (emphasis added.)

The separate voting mechanism preserves the right of ***both municipalities*** to approve the annexation decision.

Under Public Act 425 of 1984, two or more local units of government can conditionally transfer property under an arrangement known as a 425 agreement. MCL 124.21 et. seq. Similar to annexation petitions before the State Boundary Commission, a 425 agreement must be approved by a "majority of members elected and serving on the legislative body of each affected local unit" in the respective municipalities. MCL 124.24. ***Even more significant*** is that the decision to enter into a 425 agreement is subject to referendum and must be approved by ***both local units of government.*** MCL 124.25. Again, boundary changes are not imposed on one municipality by the other in the referendum process. It is a democratic process adopted by both.

Likewise, under the Urban Cooperation Act, a municipality can enter into agreements to share authority over a particular area. MCL 124.501 et. seq. Again, similar to a 425 agreement, all of the municipalities to this inter-local agreement under this Act must agree to it. MCL 124.505a. Also like 425 agreements, the decision can be submitted to a referendum in ***each municipality*** and must be passed by a "majority of the electors of the local governmental unit." Id.

In ***stark contrast*** to these statutes, the voting scheme under "single detachment" and particularly the "multiple question/joint detachment" tactic employed by the Appellants dilutes

the votes of the respective municipalities.[36] All of the other statutes permitting changes in municipal boundaries in the State of Michigan, except detachment, require the approval of ***each municipality*** and not an aggregation of the votes in all of the municipalities. The effect of aggregating votes in this manner would be that voters in a particular township are voting on a detachment of property which has ***absolutely no impact whatsoever*** on them. In particular, if the Appellants' position were adopted, a "qualified elector" in Park Township would be voting on the detachment of property to Fillmore Township. In addition, it would allow for an ***unconscionable dilution of votes*** in the City of Holland. This is unreasonable and arbitrary under the equal protection clauses. It is difficult to articulate ***any basis*** for the "common majority" rule when all other boundary adjustments in Michigan require an affirmative vote of each affected unity of government. For these reasons, the common majority voting scheme as applied to "single detachment" and "multiple question/joint detachment" is unreasonable and violates the equal protection clause of the U.S. Constitution and the Michigan Constitution.

---

[36]The election statutes that the Appellants cites to as allowing for votes to be aggregated are completely inapposite. All of them involve an election based on a common interest or representation among all of the governmental units (i.e. electing probate or court of appeals judges, electing school officials, etc.). Unlike these cases, the Appellants can point to no similar reason why voters in Laketown Township should be voting on whether property is detached from the City of Holland to Fillmore Township.

RELIEF REQUESTED

Intervenor-Appellee City of Holland requests that the Supreme Court affirm the Court of Appeals and hold that Appellants are not permitted to file a "multiple question/joint detachment" petition in this case.

Respectfully submitted,

CUNNINGHAM DALMAN, P.C.
Attorneys for Intervenor-Appellee
City of Holland

Dated: January 7, 2005

By _____

Andrew J. Mulder (P26280)
P. Haans Mulder (P61842)
Vincent L. Duckworth (P64222)
321 Settlers Road
P.O. Box 1767
Holland, MI 49422-1767

R:\Haans\City of Holland\Fillmore Township\App.Fillmore.SCt-WP.wpd